

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

Civil Action No. 04-11783 (RWZ)

**PLAINTIFF'S MOTION FOR REMAINING CLAIM CONSTRUCTION AND PARTIAL
SUMMARY JUDGMENT OF INFRINGEMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiff CytoLogix Corporation ("CytoLogix") hereby moves for: (a) claim construction of the remaining claim terms in dispute; and (b) partial summary judgment that Defendant Ventana Medical Systems, Inc. ("Ventana") has infringed U.S. Patent Nos. 6,541,261 and 6,783,733.

This Court has already construed some of the key language in the patents-in-suit. There are, however, a few additional disputed terms, and the parties' respective claim construction positions on these terms have been spelled out in interrogatory responses. CytoLogix therefore requests that the Court construe these remaining disputed terms.

For both accused Ventana products, the BenchMark XT and the BenchMark LT, there are no disputed material facts as to the structure and operation of the instruments. Accordingly, the question of literal infringement turns on claim construction. *General Mills, Inc. v. Hunt-Wesson, Inc.*, 103 F.3d 978, 983 (Fed. Cir. 1997) ("Where the parties do not dispute any relevant facts regarding the accused product, . . . but disagree over possible claim interpretations, the question of literal infringement collapses into claim construction and is amenable to summary judgment.")

Therefore, CytoLogix moves for summary judgment of literal infringement for claims 1 and 2 of U.S. Patent No. 6,541,261, and claims 1, 4-6, and 10-12 of U.S. Patent No. 6,783,733.

Filed herewith are redacted versions of: (a) Plaintiff's Memorandum in Support of this motion; (b) Plaintiff's LR 56.1 Statement of Material Facts; and (c) the Declaration of David A. Simons, which attaches exhibits cited in the Memorandum and Statement of Facts. Separately, CytoLogix has filed a Motion to Impound, seeking permission to file the unredacted versions of these materials under seal. The Motion to Impound was necessary because these papers include information Ventana has designated confidential, and Ventana does not presently consent to these materials being publicly disclosed.

WHEREFORE, CytoLogix requests that the Court construe the remaining disputed terms and grant CytoLogix partial summary judgment of infringement of both patents-in-suit.

REQUEST FOR ORAL ARGUMENT

CytoLogix requests oral argument on this Motion.

LOCAL RULE 7.1(A)(2) CERTIFICATION

On September 25, 2007, counsel for Plaintiff, David A. Simons, conferred with counsel for Ventana, Roger Chin, by telephone, in a good faith effort to resolve or narrow the issues raised in this Motion. Agreement was not reached.

Dated: September 27, 2007

/s/ Michael E. Zeliger

Michael E. Zeliger (BBO # 633654)
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT to be served upon counsel of record this 27th day of September, 2007 by filing it with the Court's ECF system.

/s/ David A. Simons